Generally, occasional dinners and similar activities may be conducted on no more than two occasions per year by a nonprofit organization without incurring tax liability. Please refer to 86 Ill. Adm. Code 130.2005. (This is a GIL.)

February 3, 2006

Dear Xxxxx:

This letter is in response to your letter dated July 6, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am the Second Vice President of the Elementary School PTA in CITY, Illinois. I am responsible for organizing and overseeing the fundraisers sponsored by our PTA. It was in this capacity that I called you on June 10, 2004, to discuss the application of Illinois law to our fundraisers. At your suggestion, I am writing to request a clarification of some of the provisions and issues we discussed.

You indicated that we are entitled to two fundraisers per year that are not subject to retailer's occupation tax, regardless of how they are structured. Under what provision of Illinois law does this exemption fall?

It is my understanding, based on our conversation, that if our PTA *sponsors an event,* rather than purchases goods for resale, our PTA is not liable for payment of Illinois sales tax on the items sold at such event. In other words if we sell a good, but the sale is structured such that: (1) the order forms come from and are produced by the vendor; (2) the order forms state the vendor's name as the vendor of the products; (3) the checks for the purchase of the goods are payable to the vendor; and (4) damaged or defective goods are replaced by/handled by the vendor, than [sic] our PTA will not be deemed to be a 'purchaser for resale' under Illinois law. Accordingly, under such circumstances, Illinois law does not impose any sales tax liability on our PTA.

Please confirm my understanding at your earliest convenience. With the new school year quickly approaching, and my contract negotiations with vendors underway, I would like to resolve this issue as soon as possible.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax applies to retail sales of tangible personal property unless the seller can document an exemption. If a seller is making a sale for resale, they are obligated to obtain valid Certificates of Resale from their purchasers. See 86 Ill. Adm. Code 130.1405.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007.

The Department continues to review the regulations governing this area in its efforts to provide clarity to taxpayers. For general information regarding sales by persons engaged in nonprofit service enterprises please refer to 86 Ill. Adm. Code 130.2005. While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a).

Organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a)(2) through 2005(a)(4). If the organization is not holding itself out as the seller of the items, then those sales need not be counted as one of its two fundraisers. See Section 130.2005(a)(4). Who is doing the actual selling will depend upon the facts in each case. Some of those facts include, but are not limited to: who the checks are made out to; who is responsible for the damaged goods; and who is listed on the order forms.

You may find helpful information regarding this area of taxation in general information letters previously issued by the Department. Please see general information letter ST 88-0353-GIL, which discusses fund raising events, and general information letters ST 97-0602-GIL, which discusses the general tax liability for various agency relationships between a school and a third party, and ST-03-0201-GIL and ST-04-0092-GIL.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk